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Prestige Messenger Service, Inc. and Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, AFL-CIO. Cases 9-CA-35647 and 9-CA-35757

November 24, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon charges and an amended charge filed by the Union on January 14, March 2 and 20, 1998, the Acting General Counsel of the National Labor Relations Board issued a complaint on April 6, 1998, against Prestige Messenger Service, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Subsequently, on April 20, 1998, the Respondent filed an answer to the complaint. On October 7, 1998, however, the Respondent withdrew its answer.

On October 19, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On October 21, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, on October 7, 1998, withdrew its answer to the complaint. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.¹

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged in the operation of a multistate parcel delivery and courier service at its facilities in Huntington and Nitro, West Virginia. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Huntington and Nitro, West Virginia facilities, goods valued at more than \$50,000 directly from points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent has maintained the following rule:

SOLICITATION

Solicitation of goods or services to customers by employees is strictly prohibited. Distribution of handbills or literature to customers for advertising, political or religious purposes is strictly prohibited. Solicitation of goods or services to other employees must be approved in advance by management. Distribution of handbills or literature to other employees for advertising, political or religious purposes must be approved in advance by management.

On about September 27, 1997, the Respondent, by its supervisor and agent, Iraj Pourfarhadi, at its Nitro, West Virginia facility, prohibited an employee from soliciting or speaking to other employees about the Union in the Respondent's facility, and created an impression among its employees that their union activities and sympathies were under surveillance.

In about November 1997, the Respondent, through its supervisor and agent, Michael Collins, at its Nitro, West Virginia facility, threatened employees by telling them that (1) voting for the Union would make things worse for employees because they could lose their jobs; (2) if they voted for the Union, things would get worse and they would lose their jobs; (3) those who voted for the Union would not have a job after he took over; (4) those who voted for the Union would lose their jobs after the election; and (5) if they voted in the Union, the Respondent's contractor, Airborne Express, would pull its contract.

In about December 1997, the Respondent, by Michael Collins, threatened employees with loss of jobs if they voted for the Union.

On about December 20, 1997, the Respondent discharged employee Shane Walsh because he joined, assisted, or supported the Union and engaged in concerted

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

activities, and to discourage employees from engaging in those activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.²

By discharging Shane Walsh, the Respondent has discriminated in regard to hire or tenure or terms and conditions of employment, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has maintained an unlawful rule in violation of Section 8(a)(1), we shall order the Respondent to rescind the rule. Further, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Shane Walsh, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. We also shall order the Respondent to make Walsh whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be required to remove from its files any reference to Walsh's unlawful discharge, and to notify him in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Prestige Messenger Service, Inc., Nitro, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining the following unlawful rule:

SOLICITATION

Solicitation of goods or services to customers by employees is strictly prohibited. Distribution of handbills or literature to customers for advertising, political or religious purposes is strictly prohibited. Solicitation of

goods or services to other employees must be approved in advance by management. Distribution of handbills or literature to other employees for advertising, political or religious purposes must be approved in advance by management.

(b) Threatening employees that things would get worse, that they would lose their jobs, and that the Respondent's contractor, Airborne Express, would terminate its contract, if they select Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, AFL-CIO, as their bargaining representative.

(c) Creating an impression among employees that their union activities are under surveillance.

(d) Prohibiting employees from soliciting or speaking to fellow employees about the Union in the Respondent's facility.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its unlawful rule set forth above.

(b) Within 14 days from the date of this Order, offer Shane Walsh full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(c) Make Shane Walsh whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, in the manner set forth in the remedy section of this decision.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Shane Walsh, and within 3 days thereafter, notify him in writing that this has been done and that his discharge will not be used against him in any way.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facility in Nitro, West Virginia, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places

² In joining his colleagues in concluding that the Respondent violated Sec. 8(a)(1) by maintaining its solicitation rule, Member Brame emphasizes that the Respondent has withdrawn its answer and, accordingly, the complaint allegation is deemed admitted to be true.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 27, 1997.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 24, 1998

Sarah M. Fox,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain the following unlawful rule:

SOLICITATION

Solicitation of goods or services to customers by employees is strictly prohibited. Distribution of handbills or literature to customers for advertising, political or religious purposes is strictly prohibited. Solicitation of goods or services to other employees must be approved in advance by management. Distribution of handbills or literature to other employees for advertising, political or religious purposes must be approved in advance by management.

WE WILL NOT threaten you that things would get worse, that you would lose your jobs, and that our contractor, Airborne Express, would terminate its contract, if you select Chauffeurs, Teamsters and Helpers Local Union No. 175, affiliated with the International Brotherhood of Teamsters, AFL-CIO, as your bargaining representative.

WE WILL NOT create an impression among you that your union activities are under surveillance.

WE WILL NOT prohibit you from soliciting or speaking to fellow employees about the Union in our facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our unlawful rule set forth above.

WE WILL, within 14 days from the date of this Order, offer Shane Walsh full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Shane Walsh whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge, with interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Shane Walsh, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that his discharge will not be used against him in any way.

PRESTIGE MESSENGER SERVICE, INC.